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March 23, 2013

**VIA ELECTRONIC SERVICE** *akennon@wshblaw.com*

Alicia Kennon, Esq.  
Wood Smith Henning & Berman LLP  
1401 Willow Pass Road, Suite 700  
Concord, CA 94520-5735

Re: *Institute of Medical Education, Inc. v. Western Assn. of Schools and Colleges, N.D. Cal., Case No. CV-11-05755-LHK*

Dear Ms. Kennon,

Under separate cover, I am sending you 782 pages of documents that were produced by the United States Department of Education in response to a Freedom of Information Act request by the Institute of Medical Education, Inc. (“IME”). All of these documents should have been produced by your client, the Western Association of Schools and Colleges (“WASC”), in response to IME’s prior document requests in this action, but were not.

In particular, WASC failed to produce a November 2, 2011 letter from the United States Department of Education (“USDOE”) to WASC stating:

“It has recently come to our attention that the Western Association of Schools and Colleges, Accrediting Commission for Schools (Commission), has been mischaracterizing their relationship with the Department and the Secretary’s recognition process. (Please see attachments.) Of particular concern is a June 3, 2011 memo from the Commission to postsecondary school administrators and directors that states that WASC has ‘serviced the USDOE by playing the role of pathway for postsecondary schools who wished to pursue Title IV funds,’ and that WASC is ‘still functioning as a recognized accrediting agency in the United States and around the world.’ The Department is concerned by the inaccuracies of these statements.”

WASC also failed to produce a November 10, 2011 letter that it sent to directors of postsecondary schools where in it admitted that its “statement that WASC was still a recognized accrediting agency in the United States was not correct.” Copies of the referenced June 3, 2011, November 2, 2011, and November 10, 2011 letters are attached hereto as Exhibits A, B and C for your ease of reference.

It appears that WASC’s failure to produce the subject documents was the result of willful misconduct on the part of you or your client. While I understand that you are a zealous advocate for WASC, I would hope that your advocacy would not extend to you willfully perpetuating WASC’s fraud by failing to produce clearly responsive documents wherein WASC admits that it made misrepresentations to its member schools. Unless you immediately provide a satisfactory explanation to both the Court and me as to why these

Alicia Kennon, Esq.  
Wood Smith Henning & Berman LLP  
March 23, 2013  
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documents were not produced by WASC, IME intends to seek terminating and evidentiary sanctions against WASC, as well as monetary sanctions against both you and your client.

Thank you for your attention to the foregoing. I look forward to your response.

Very truly yours,

A handwritten signature in blue ink that reads "Seth Wiener". The signature is fluid and cursive, with "Seth" on the top line and "Wiener" on the bottom line.

Seth W. Wiener

cc: The Honorable Lucy Koh



## Accrediting Commission for Schools

### SOUTHERN CALIFORNIA OFFICE

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TO: Postsecondary School Administrators/Directors  
FROM: Lee Duncan, Associate Executive Director, WASC  
DATE: June 3, 2011  
TOPIC: Confusing letter from the U.S. Department of Education

In the past couple of weeks your institution received a letter from the U.S. Department of Education (USDOE) stating "The Western Association of Schools and Colleges -- Accrediting Commission for Schools is no longer a nationally recognized accrediting agency." This sounds like WASC has disbanded! The meaning, however, is quite different than it appears to be: WASC is asking the USDOE to change the way that this letter is worded to make the meaning more clear.

What USDOE meant to say was that WASC accreditation is no longer a pathway for Title IV eligibility. In the past WASC has serviced the USDOE by playing the role of pathway for postsecondary schools who wished to pursue Title IV funds. As of October 26, 2010, WASC is no longer playing that role but it certainly is still functioning as a recognized accrediting agency in the United States and around the world.

WASC has about 25 schools here in California that currently access Title IV funds; each school has until April 26, 2012 to develop a partnership with an accrediting agency that does serve as a pathway for Title IV eligibility. There is an agency that WASC recommends to our California postsecondary schools, the Council on Occupational Education (COE). This agency provides accreditation that opens the door to Title IV fund applications. WASC is currently working on a partnership with COE that would allow postsecondary schools to have a joint visit, resulting in accreditation by both WASC and COE. This would continue WASC accreditation for academic purposes and then also provide COE accreditation for Title IV purposes. You will be notified when more details become available.

WASC is honored to be considered one of the most significant accrediting agencies in the United States and around the world. WASC services more than 4500 schools and is pleased to see how the WASC accreditation process is bringing improvement to schools all over the world. The recent letter from the USDOE made it sound like WASC was closing for business; however, we want to assure you that we are alive and well and moving forward. If you have any questions, be sure to let us know. Best wishes to you!

## EXHIBIT B



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

November 2, 2011

David Brown, Ph.D.  
Western Association of Schools and Colleges,  
Accrediting Commission for Schools  
43517 Ridge Park Drive, Suite 100  
Temecula, CA 92590

Dear Dr. Brown:

It has recently come to our attention that the Western Association of Schools and Colleges, Accrediting Commission for Schools (Commission), has been mischaracterizing their relationship with the Department and the Secretary's recognition process. (Please see attachments.)

Of particular concern is a June 3, 2011 memo from the Commission to postsecondary school administrators and directors that states that WASC has "serviced the USDOE by playing the role of pathway for postsecondary schools who wished to pursue Title IV funds," and that WASC is "still functioning as a recognized accrediting agency in the United States and around the world." The Department is concerned by the inaccuracies of these statements.

The Department reminds the Commission that seeking the Secretary's recognition is *voluntary* on the part of accrediting agencies. In addition, recognition status denotes a determination by the Secretary that an applicant agency is a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs it accredits, as judged against the recognition criteria set forth in Title IV of the Higher Education Act of 1965, as amended (HEA), and the Secretary's implementing regulations under Part 602 of Title 34 of the Code of Federal Regulations. The "service" that the Commission provided as a recognized accrediting agency was not to the Department but to its accredited postsecondary institutions by making an assessment of the quality of postsecondary education they offer and rendering them eligible to apply for Federal grants, participation in Title IV student financial aid programs, and other Federal programs.

Furthermore, contrary to the June 3, 2011 memo to WASC-accredited postsecondary institutions, the Office of Federal Student Aid was accurate in stating that the Commission is no longer a nationally recognized accrediting agency, and that the "Department accordingly withdrew its recognition [upon the Commission's request] effective October 26, 2010." The phrase "nationally recognized accrediting agency" is a term originating in the HEA, currently at Sections 1001(a)(5) and (c), and derives its meaning from that context. Should there be inquiries

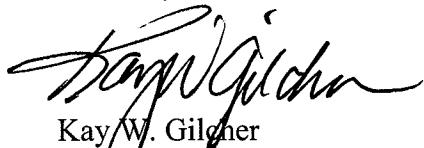
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by WASC-accredited postsecondary institutions to the Commission regarding its recognition status, it is incumbent on the Commission to openly and accurately communicate to its accredited institutions that the Commission has withdrawn from recognition by the U.S. Department of Education, and that the Commission is no longer recognized by the Secretary.

The Commission's mischaracterization of its status and the inaccurate statements it has made to its postsecondary accredited institutions cause the Department serious reservations with respect to the Commission's recent expressions of interest in reapplying for recognition.

The Department expects that the Commission will correct such misrepresentations with its accredited schools and cooperate with the Office of Federal Student Aid for the remainder of the 18-months during which its accredited institutions may seek accreditation from a recognized accrediting agency.

Sincerely,



Kay W. Gilcher  
Director, Accreditation Division

cc:Linda Simonyan, United Medical Institute  
Erik Fosker, Office of Federal Student Aid

Enclosure

## EXHIBIT C



# Accrediting Commission for Schools

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TO: Directors of Postsecondary Schools  
 FROM: Dr. David Brown, Executive Director, WASC  
 DATE: November 10, 2011  
 TOPIC: Clarification of WASC's Relationship with USDOE

This memo is to clarify the relationship that WASC has with the United States Department of Education since its withdrawal from the recognition process with the Secretary of Education in October 2010.

The primary mission of the Western Association of Schools and Colleges is to serve K-12 schools in California, Hawaii, the Pacific Islands, and Eastern Asia. WASC is a private, non-profit, accrediting agency, one of six regional accrediting agencies in the United States. It enjoys reciprocal agreements with the other five regional agencies and its accreditation work is acknowledged and accepted around the world.

The K-12 division of WASC currently has the responsibility of accrediting non-degree granting postsecondary schools in our Region. It is in this relationship of serving postsecondary schools that there had been a connection with the United States Department of Education (USDOE) prior to our having withdrawn our petition for authorization.

USDOE has a recognition process and status that identifies agencies that are considered to be a reliable authority concerning the quality of education in institutions of higher learning as judged against the criteria set forth in the Title IV Act of Higher Education enacted in 1965. The purpose of this memo is to clarify that WASC is no longer a nationally recognized agency by the USDOE as of October 26, 2010. The WASC Commission has withdrawn from the recognition process offered by the USDOE and is no longer recognized by the Secretary. Postsecondary institutions that wish to pursue Title IV funds must be accredited by an agency that is recognized by the USDOE – WASC is no longer recognized by the USDOE.

In a WASC memo sent to you on June 3, 2011, the terminology that stated that WASC serviced the USDOE by playing the role as a pathway to pursue Title IV funds and the statement that WASC was still a recognized accrediting agency in the United States was not correct. WASC will be careful in the future to identify itself without using the term "recognized" as that it may be confusing in regard to USDOE's status designations. It is the desire of WASC to accurately describe its relationship with the USDOE and not mischaracterize it in any manner. We apologize for any past misrepresentations and we assure you that they were unintentional.

If you have any questions regarding postsecondary education and its relationship to the United States Department of Education, you may call Dr. Brown in the Burlingame office.